



**Federal Communications Commission
Compliance and Information Bureau
1225 North Loop West, Suite 900
Houston, TX 77008
July 24, 1995**

MM 96-173

Chameleon Radio Corporation
10865 Rockley Road
Houston, TX 77099

Written Reply Required

Ref#: HU-9500643

OFFICIAL NOTICE OF VIOLATION

This is an Official Notice of Violation issued in accordance with Section 1.89 of the Commission's rules (47 C.F.R. §1.89), to Chameleon Radio Corporation for violation of the terms of the Special Temporary Authority granted on May 12, 1995 and Section 73.1560(a) of the Commission's Rules (47 C.F.R. §73.1560(a)).

On June 17, June 23, June 29, and July 6, 1995, an agent from the Commission's Compliance and Information Bureau conducted field strength measurements on the radio signal of station KFCC (1270KHz). A list of the measurements are shown in the appendix. The measurements reveal that KFCC was operating beyond the terms of the Special Temporary Authority (STA) granted on May 12, 1995. The STA was granted to Chameleon Radio Corporation to operate the station with a maximum daytime power of 300 watts and a maximum nighttime power of 50 watts. The measurements show that the station failed to reduce their operating power from the daytime to the nighttime mode. Therefore, the station was found operating grossly overpower during the nighttime operating hours on June 17, 1995, June 23, 1995, and June 29, 1995.

Field strength measurements were conducted at four different points from KFCC's antenna element. The field strength levels at each particular point were essentially the same for day and night operation of the station. The measurements indicate that there was no change in the operating power level of the station from daytime to nighttime operation on June 17, June 23, and June 29, 1995. Daytime field strength measurements were also conducted on July 6, 1995 (9:23AM-9:55AM), just before the inspection of the station. These field strength measurements made before the inspection on July 6, 1995, showed essentially the same operating power level as was used during the nights of June 17, June 23, and June 29, 1995.

On July 6, 1995, an inspection of the station was conducted during daytime hours by representatives from the FCC. At the time of the inspection, the antenna input power of the station was measured at 342 watts using the indirect method¹. Upon FCC request, station personnel adjusted the transmitter to their low power nighttime operating mode.

¹ The transmitter plate current was measured at 6.75 amps and the plate voltage at 59 volts. The manufactures transmitter efficiency factor as stated from KFCC's station engineer was 86 percent. Using the indirect power formula in 47 C.F.R. §73.51(e), the antenna input power calculates to 342 watts for the daytime operating mode.

The antenna input power was then measured at 75 watts using the indirect method². Field strength measurements were conducted while the station was in the nighttime low power mode. The field strength of KFCC's radio signal was measured at the previous defined points at approximately 1.0KM, 1.0KM, 1.3KM, 2.7KM, from the vertical antenna of KFCC. The field strength was measured at 80mV/m, 70mV/m, 50mV/m, and 26.5mV/m, respectively. The field strength levels were significantly lower compared to the field strength levels measured on the night hours on the 17th, 23rd, and 29th of June at the same distinct points. These field strength measurements clearly indicate that the station had operated at a power level grossly exceeding the authorized nighttime power of 50 watts during nighttime hours on June 17, June 23, and June 29, 1995.

The expected groundwave field strength can be calculated for a simple vertical 180 foot non-directional antenna using figure 8 of 47 C.F.R. §73.190, and the graphs referenced in 47 C.F.R. §73.184. The expected groundwave field strength for 50 watts of power at approximately 1KM, 1.3KM, and 2.7KM, is 67mV/m, 52mV/m, and 25mV/m, respectively³. The field strength levels measured on the nighttime hours on June 17, June 23, and June 29, 1995, far exceeded the expected groundwave field strengths for 50 watts of power at these distances.

Pursuant to Section 1.89 of the Commission's Rules, 47 C.F.R. §1.89, Chameleon Radio Corporation, shall within 10 days upon receipt of this notice submit a written statement concerning the violation of overpower operation during the nighttime operating hours of June 17, June 23, and June 29, 1995, to the address in the letterhead. The response for the violation shall be complete in itself, and shall describe the action taken to correct and prevent continuation or recurrence of the violation. Please indicate the reference number on your response.

Violations, if repeated or willful, as well as a failure to reply to this notice, may result either in the imposition of monetary forfeitures, the revocation of your station license or suspension of operator license. (See Section 503, 312, and 303(m) of the Communications Act of 1934, as amended, and Section 1.89 of the Commission's Rules.)

The knowing and willful making of any false statement in reply to this Notice is punishable by fine or imprisonment under Title 18, United States Code, Section 1001.

The Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. 552a(e)(3) requires that we advise you that the Commission's staff will use all relevant and material information before it, including the information disclosed in your reply to determine what, if any, enforcement action is required to ensure current and future rule compliance.


Kennard J. Adamcik
Issuing Officer


Stephen P. Lee
Acting Engineer-In-Charge

² The transmitter plate current was measured at 3.25 amps and the plate voltage at 27 volts. Using the indirect power formula in 47 C.F.R. §73.51(e), the antenna input power calculates to 75 watts for the low power mode.

³ The expected field strengths were calculated using the maximum conductivity (5000 mmhos/m) given in the charts. Please note that the actual ground conductivity around the antenna would be lower; therefore resulting in a lower value for the expected field strength.

APPENDIX

FIELD STRENGTH MEASUREMENT DATA OF STATION KFCC

<u>Date & Time</u>	<u>Field Strength Measured</u>
------------------------	--------------------------------

Point Location - (approx. 1.0 Kilometer SE from antenna)

6/17/95 6:14PM	170 mV/m
6/17/95 7:33PM	175 mV/m
6/17/95 9:38PM	175 mV/m
6/17/95 10:34PM	175 mV/m
6/23/95 7:07PM	178 mV/m
6/23/95 7:47PM	178 mV/m
6/23/95 9:43PM	181 mV/m
6/29/95 6:48PM	178 mV/m
6/29/95 7:17PM	181 mV/m
6/29/95 9:45PM	182 mV/m
7/06/95 9:39AM	180 mV/m
7/06/95 11:51AM	80 mV/m (low power mode)

Point Location - (approx. 1.0 Kilometer N from antenna)

6/29/95 7:04PM	165 mV/m
6/29/95 7:48PM	162 mV/m
6/29/95 9:37PM	161 mV/m
7/06/95 9:26AM	164 mV/m
7/6/95 12:11PM	70 mV/m (low power mode)

Point Location- (approx. 1.3 Kilometers from antenna)

6/17/95 7:00PM	110 mV/m
6/17/95 7:49PM	110 mV/m
6/17/95 9:56PM	112 mV/m
6/17/95 10:51PM	112 mV/m
6/23/95 7:21PM	110 mV/m
6/23/95 7:51PM	112 mV/m
6/23/95 9:56PM	112 mV/m
6/29/95 6:26PM	110 mV/m
6/29/95 7:33PM	112 mV/m
6/29/95 9:55PM	112 mV/m
7/06/95 9:55AM	112 mV/m
7/06/95 11:59AM	50 mV/m (low power mode)

Point Location - (approx. 2.7 Kilometers from antenna)

6/23/95 6:40PM	62 mV/m
6/23/95 7:29PM	61 mV/m
6/23/95 9:34PM	61 mV/m
6/29/95 6:35PM	61 mV/m
6/29/95 7:36PM	62 mV/m
6/29/95 9:32PM	63 mV/m
7/06/95 9:23AM	62 mV/m
7/06/95 12:05PM	26.5 mV/m (low power mode)

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

1225 North Loop West, Suite 900
Houston, TX 77008

WARNING

CERTIFIED MAIL NO.P881 067 592
RETURN RECEIPT REQUESTED

1. Name and Address of Licensee

Chameleon Radio Corporation
10865 Rockley Road
Houston, TX 77099

Location of Station or Name of Craft	1. Call Sign	4. Radio Service or Class of Station	5. Date(s) of Violation	6. Date Correspondence Mailed or Served
Bay City, TX	KFCC	BS	6/17/95, 6/23/95 6/29/95	7/24/95

This refers to your failure to submit a response to:

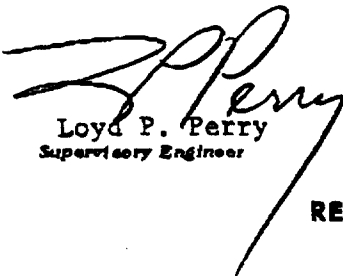
- ☒ Official Notice of Violation ~~6/17/95, 6/23/95~~
☐ Continuation of Notice of Violation (FCC Form 789),

a copy of which is attached.

By failing to respond, you have violated Section 1.89 of the Commission's Rules.

Any violation, if repeated or willful, as well as your failure to reply to this Warning, may result in either the imposition of monetary forfeitures, the revocation of station license, or suspension of operator license. (See Sections 503, 312, and 303(m) of the Communications Act of 1934, as amended, and Section 1.89 of the Commission's Rules.)

You are again requested to submit a reply concerning the item marked above. Your reply should be mailed, within ten days of your receipt of this letter, to FEDERAL COMMUNICATIONS COMMISSION at the address shown above and should contain an explanation of your failure to file a timely response. Additionally, a full explanation of each of the violations set forth in the item marked above and a detailed statement of the action taken to prevent a continuation or recurrence of each violation alleged to have occurred should be included.


Loyd P. Perry
Supervisory Engineer

8/28/95
Date

REFER TO OTHER SIDE FOR PRIVACY ACT STATEMENT

The knowing and willful making of any false statement in reply to this NOTICE is punishable by fine or imprisonment under Title 18, United States Code, Section 1001.

(All previous editions of this form are canceled.)

(See reverse side)

FCC Form 794
April 1978

JUN-14-1996 09:16

FCC-HOUSTON



Federal Communications Commission
Compliance and Information Bureau
1225 North Loop West, Suite 900
Houston, TX 77008
July 24, 1995

Chameleon Radio Corporation
 10865 Rockley Road
 Houston, TX 77099

Written Reply Required

Ref#: HU-9500643

OFFICIAL NOTICE OF VIOLATION

This is an Official Notice of Violation issued in accordance with Section 1.89 of the Commission's rules (47 C.F.R. §1.89), to Chameleon Radio Corporation for violation of the terms of the Special Temporary Authority granted on May 12, 1995 and Section 73.1560(a) of the Commission's Rules (47 C.F.R. §73.1560(a)).

On June 17, June 23, June 29, and July 6, 1995, an agent from the Commission's Compliance and Information Bureau conducted field strength measurements on the radio signal of station KFCC (1270KHz). A list of the measurements are shown in the appendix. The measurements reveal that KFCC was operating beyond the terms of the Special Temporary Authority (STA) granted on May 12, 1995. The STA was granted to Chameleon Radio Corporation to operate the station with a maximum daytime power of 300 watts and a maximum nighttime power of 50 watts. The measurements show that the station failed to reduce their operating power from the daytime to the nighttime mode. Therefore, the station was found operating grossly overpower during the nighttime operating hours on June 17, 1995, June 23, 1995, and June 29, 1995.

Field strength measurements were conducted at four different points from KFCC's antenna element. The field strength levels at each particular point were essentially the same for day and night operation of the station. The measurements indicate that there was no change in the operating power level of the station from daytime to nighttime operation on June 17, June 23, and June 29, 1995. Daytime field strength measurements were also conducted on July 6, 1995 (9:23AM-9:55AM), just before the inspection of the station. These field strength measurements made before the inspection on July 6, 1995, showed essentially the same operating power level as was used during the nights of June 17, June 23, and June 29, 1995.

On July 6, 1995, an inspection of the station was conducted during daytime hours by representatives from the FCC. At the time of the inspection, the antenna input power of the station was measured at 342 watts using the indirect method¹. Upon FCC request, station personnel adjusted the transmitter to their low power nighttime operating mode.

¹ The transmitter plate current was measured at 6.75 amps and the plate voltage at 59 volts. The manufactures transmitter efficiency factor as stated from KFCC's station engineer was 86 percent. Using the indirect power formula in 47 C.F.R. §73.51(e), the antenna input power calculates to 342 watts for the daytime operating mode.

The antenna input power was then measured at 75 watts using the indirect method². Field strength measurements were conducted while the station was in the nighttime low power mode. The field strength of KFCC's radio signal was measured at the previous defined points at approximately 1.0KM, 1.0KM, 1.3KM, 2.7KM, from the vertical antenna of KFCC. The field strength was measured at 80mV/m, 70mV/m, 50mV/m, and 26.5mV/m, respectively. The field strength levels were significantly lower compared to the field strength levels measured on the night hours on the 17th, 23rd, and 29th of June at the same distinct points. These field strength measurements clearly indicate that the station had operated at a power level grossly exceeding the authorized nighttime power of 50 watts during nighttime hours on June 17, June 23, and June 29, 1995.

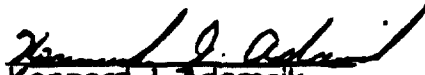
The expected groundwave field strength can be calculated for a simple vertical 180 foot non-directional antenna using figure 8 of 47 C.F.R. §73.190, and the graphs referenced in 47 C.F.R. §73.184. The expected groundwave field strength for 50 watts of power at approximately 1KM, 1.3KM, and 2.7KM, is 67mV/m, 52mV/m, and 25mV/m, respectively³. The field strength levels measured on the nighttime hours on June 17, June 23, and June 29, 1995, far exceeded the expected groundwave field strengths for 50 watts of power at these distances.

Pursuant to Section 1.89 of the Commission's Rules, 47 C.F.R. §1.89, Chameleon Radio Corporation, shall within 10 days upon receipt of this notice submit a written statement concerning the violation of overpower operation during the nighttime operating hours of June 17, June 23, and June 29, 1995, to the address in the letterhead. The response for the violation shall be complete in itself, and shall describe the action taken to correct and prevent continuation or recurrence of the violation. Please indicate the reference number on your response.

Violations, if repeated or willful, as well as a failure to reply to this notice, may result either in the imposition of monetary forfeitures, the revocation of your station license or suspension of operator license. (See Section 503, 312, and 303(m) of the Communications Act of 1934, as amended, and Section 1.89 of the Commission's Rules.)

The knowing and willful making of any false statement in reply to this Notice is punishable by fine or imprisonment under Title 18, United States Code, Section 1001.

The Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. 552a(e)(3) requires that we advise you that the Commission's staff will use all relevant and material information before it, including the information disclosed in your reply to determine what, if any, enforcement action is required to ensure current and future rule compliance.


Kennard J. Adamcik
Issuing Officer


Stephen P. Lee
Acting Engineer-In-Charge

² The transmitter plate current was measured at 3.25 amps and the plate voltage at 27 volts. Using the indirect power formula in 47 C.F.R. §73.51(e), the antenna input power calculates to 75 watts for the low power mode.

³ The expected field strengths were calculated using the maximum conductivity (5000 mmhos/m) given in the charts. Please note that the actual ground conductivity around the antenna would be lower; therefore resulting in a lower value for the expected field strength.

APPENDIX

FIELD STRENGTH MEASUREMENT DATA OF STATION KFCC

<u>Date & Time</u>	<u>Field Strength Measured</u>
------------------------	--------------------------------

Point Location - (approx. 1.0 Kilometer SE from antenna)

6/17/95 6:14PM	170 mV/m
6/17/95 7:33PM	175 mV/m
6/17/95 9:38PM	175 mV/m
6/17/95 10:34PM	175 mV/m
6/23/95 7:07PM	178 mV/m
6/23/95 7:47PM	178 mV/m
6/23/95 9:43PM	181 mV/m
6/29/95 8:48PM	178 mV/m
6/29/95 7:17PM	181 mV/m
6/29/95 9:45PM	182 mV/m
7/06/95 9:39AM	180 mV/m
7/06/95 11:51AM	80 mV/m (low power mode)

Point Location - (approx. 1.0 Kilometer N from antenna)

6/29/95 7:04PM	185 mV/m
6/29/95 7:48PM	182 mV/m
6/29/95 9:37PM	181 mV/m
7/06/95 9:26AM	164 mV/m
7/6/95 12:11PM	70 mV/m (low power mode)

Point Location- (approx. 1.3 Kilometers from antenna)

6/17/95 7:00PM	110 mV/m
6/17/95 7:40PM	110 mV/m
6/17/95 9:58PM	112 mV/m
6/17/95 10:51PM	112 mV/m
6/23/95 7:21PM	110 mV/m
6/23/95 7:51PM	112 mV/m
6/23/95 9:58PM	112 mV/m
6/29/95 6:26PM	110 mV/m
6/29/95 7:33PM	112 mV/m
6/29/95 9:55PM	112 mV/m
7/06/95 9:55AM	112 mV/m
7/06/95 11:59AM	50 mV/m (low power mode)

Point Location - (approx. 2.7 Kilometers from antenna)

6/23/95 6:40PM	62 mV/m
6/23/95 7:29PM	61 mV/m
6/23/95 9:34PM	61 mV/m
6/29/95 6:35PM	61 mV/m
6/29/95 7:36PM	62 mV/m
6/29/95 9:32PM	63 mV/m
7/06/95 9:23AM	62 mV/m
7/06/95 12:05PM	26.5 mV/m (low power mode)

**KFCC****1270 AM****Chameleon Radio Corporation****(713) 575-1270 Fax: (713) 564-8653****10865 Rockley Road Houston, TX 77099 P.O. Box 1235 Stafford, TX 77497****Houston's Unique Talk and International Language Station**

September 18, 1995

Lloyd P. Perry, Supervisory Engineer
Federal Communications Commission
Field Operations Bureau, Houston
1225 North Loop West, Suite 900
Houston, Texas 77008

Re: HU-9500643

Certified Mail Receipt No.: Z 695 180 775

Dear Mr. Perry:

In reply to your letter of July 24, 1995 regarding power violations at the STA transmitter location of KFCC, please be informed that, following inspection by Kennard J. Adamcick and Stephen P. Lee, Chameleon Radio Corporation conducted an internal inquiry to determine the source of its failure to reduce power to the required 50 watts on the dates indicated in your Official Notice of Violation.

The results of the inquiry resulted in the discovery that the licensed operator in charge of the transmitter during the periods in question was improperly instructed as to the use of the remote control system which had been installed with the construction of the STA site in rural Harris County, Texas. While the operator believed he was lowering power to the required 50 watts, he in fact, was utilizing a function of the Sine Systems RF-1B remote control to marginally lower the power from the 300 watts daytime power resulting in a power level of between 275 and 290 watts instead of the required 50 watts night operation.

HOUSTON, TEXAS

SEP 18 1995

[Handwritten signature]

Inasmuch as the operator had never before operated a remote control similar to the unit in use at KFCC and no remote control had been utilized by Chameleon nor its sister company KENR Management Company in the operation of KENR AM (1070 kHz, Houston, Texas) {note: KENR had been operated under an LMA prior to May 9, 1995 and had been controlled by the licensee, not Chameleon or KENR Management Company, Inc.}, the error is understandable.

Following the inspection on July 6, 1995, Chameleon instituted several changes to insure that such a problem does not reoccur. First, all control room operators were reinstructed as to the operation of the remote control and the methods used to raise and lower the station's power. Each operator was required to show proficiency at such operations as well as the taking and logging of transmitter constants. Second, the station's chief operator was instructed to make weekly inspections of transmitter logs to make certain no future occurrences similar to those found by Mr.'s Adamcik and Lee would occur. And finally, the station's program director was instructed to make a check of the transmitter's operating parameters both at morning power up time and during the evening hours at power down time as a double check to make certain the operator on duty had properly made changes in the transmitter's operating constants as required by the rules.

Chameleon Radio Corporation is committed to strict compliance with the Commission's rules regarding operating constants and while the lapses in the instant case were in fact, the mistakes of an individual operator, Chameleon takes full responsibility for the violations cited in your letter and will continue to take all actions necessary to see to it these violations do not occur again.

Respectfully submitted,



Don Werlinger, President

cc: KFCC Public Inspection File

MM 96-173

FEDERAL MAIL SECTION

JUL 75 10 50 AM '95

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 25 1995

In Reply Refer To:
1800B3-KDY

VIA TELECOPIER AND CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Don Werlinger,
President
Chameleon Radio Corporation
10865 Rockley Road
Houston, Texas 77099

In re: KFCC(AM) Bay City, Texas
(formerly KIOX(AM))
Letter of Inquiry

Dear Mr. Werlinger:

On May 5, 1995, the Commission granted Chameleon Radio Corporation ("Chameleon") a special temporary authority ("STA") to operate station KFCC(AM) at variance from its licensed parameters.¹ As set forth in greater detail below, on May 25, 1995, the Chief, Audio Services Division, Mass Media Bureau, stayed a rescission of that STA grant pending a further clarification of the record.² In addition, since the entry of the stay, two licensees have filed objections complaining of, among other things, electrical interference caused by KFCC(AM)'s STA operation. This letter seeks further information from Chameleon.

Background. Station KFCC(AM) is licensed to serve Bay City, Texas, on 1270 kHz with a transmitter power of 1000 watts (DA-N), from a site 5.8 km northeast of Bay City, Texas ("Bay City Site"). The Commission's records indicate that KFCC(AM)'s main studio is located at the Bay City Site.

On April 18, 1995, the Commission approved an application assigning KFCC(AM)

¹ The subject STA expires on August 1, 1995.

² Pursuant to 47 C.F.R. § 73.1635(a)(5)(b), the Commission may modify or cancel without prior notice or hearing any STA.

from Landrum Enterprises ("Landrum")³ to Chameleon (BAL-950216EA). Documents associated with the application provide that Chameleon would, upon consummation, assume an existing lease for the Bay City Site from Landrum and then, simultaneously, sublease the Bay City Site back to Landrum. Those documents do not indicate whether Chameleon maintains a post-consummation right to the Bay City Site. On May 11, 1995, Landrum filed a letter with the Commission stating that the subject transaction had been consummated. The letter did not, however, identify the actual date of consummation.

Meanwhile, on April 21, 1995, Chameleon, filed a request for STA, describing itself as KFCC(AM)'s licensee. Chameleon claimed a need to relocate the station's transmitter "[d]ue to the loss of its currently licensed site." Chameleon proposed to operate from "rural southwest Harris County" ("Harris County Site") at coordinates N29-38-10, W95-32-22 and requested authority to operate nondirectionally at 1000 watts day, 250 watts night. Chameleon further proposed "to utilize a [180'] tower supporting a folded unipole antenna system." Chameleon also stated that, on April 20, 1995, it sought "FAA authority to construct." Claiming that the STA operation will produce no prohibited overlap - "with the exception of KWHI(AM), Brenham, Texas" - Chameleon stated that it intended to file an FCC Form 301 application to seek permanent authority for operations from the Harris County Site. Pursuant to an oral conversation with the Commission staff, Mr. Werlinger was informed that this STA could not be granted because it appeared to involve construction of a new tower.

In response, on May 2, 1995, Chameleon amended its STA request. Chameleon submitted an amended Figure E-1 correcting the coordinates of the "existing 180' tower" to N29-38-14, W95-32-24. Chameleon stated that "[t]he tower in our original proposal will be the center tower of what will be a three tower array." Chameleon also stated that it intended to file an FCC Form 301 "within 30 days of placing the STA on the air."

On May 5, 1995, the Commission staff granted Chameleon STA to operate with the parameters described in the initial STA request. That letter indicated that the staff believed the STA site to be only 0.25 km from the licensed site.⁴ After further study, though, on May 12, 1995, the Commission staff superseded its May 5 letter to instead specify the amended STA tower coordinates and to reduce KFCC(AM)'s operating power to 300 watts daytime and 50 watts nighttime. Subsequently, on May 18, 1995, the Commission staff issued a letter to Chameleon rescinding the STA ("Rescission Letter"). The Commission staff stated that further study had revealed that KFCC(AM) could not cover its community of license, Bay

³ Landrum remains the licensee of station KIOX(FM). Commission records indicate that KIOX(FM) operates from a site 39.4 km southwest of Bay City and that the KIOX(FM) main studio is located on the Bay City Site.

⁴ This statement in the May 5th letter is incorrect and was the result of inadvertent staff error in interpreting Chameleon's amended Figure E-1.

City, Texas, from the Harris County Site in apparent contravention of 47 C.F.R. 73.24(i). The Recision Letter, however, was stayed on May 25, 1995 by action of the Chief, Audio Services Division, Mass Media Bureau, pending further clarification of the record.

Two licensees have filed objections requesting cancellation of the subject STA. In letters dated May 23, 1995 and June 20, 1995, South Texas Broadcasting, Inc. ("South Texas")⁵ alleges that the subject STA violates "clear technical standards" as the STA site is located approximately fifty (50) miles from the Bay City Site, causes prohibited interference to stations KESS(AM), Fort Worth, Texas and KWHI(AM), Brenham, Texas, and does not provide coverage of KFCC(AM)'s community of license. South Texas further contends that documents associated with Chameleon's recent assignment application indicates that Chameleon voluntarily assigned away to Landrum the right to use KFCC(AM)'s licensed site. The second objection comes from a July 20, 1995, "Petition for Immediate Cancellation of STA" filed by Tom S. Whitehead, Inc. ("Whitehead").⁶ Whitehead contends that Chameleon has not justified the need for an alternative site and that grant of STA to operate at the Harris County Site "is inappropriate and ultra vires." Whitehead also attaches a technical study, supported by affidavit, alleging that "more than 100,000 people in KWHI's primary groundwave service contour who previously did not experience interference from KFCC now receive interference from KFCC."⁷

Discussion/Inquiry. Section 73.1635(a) of the Commission's Rules provides for the issuance of an "STA to a licensee to permit the operation of a broadcast facility for a limited period at a specific variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station." 47 C.F.R. §1635(a). Any STA request must "fully describe the proposed operation and the necessity for the requested STA." 47 C.F.R. § 73.1635(a)(2). In view of the facts presented above, we require the further information set forth below.

First, when an applicant requests an STA pursuant to a transmitter site "loss", our policy is to require that the site "loss" be beyond the applicant's control before granting STA. Chameleon's STA request does not fully describe the factors concerning the "loss" of the Bay City Site. Therefore, please address the following:

1. Provide specific details concerning: (a) the circumstances under which

⁵ South Texas is the licensee of KENR(AM), Houston, Texas,

⁶ Whitehead is the licensee of KWHI(AM), Brenham, Texas.

⁷ Our review of this technical study indicates, however, that Whitehead bases his conclusion on a contour overlap study rather than an interference study. Only a portion of the area receiving overlap receives interference. Additionally, at least some of the data relied upon in the study do not meet the Commission's technical standards for proper analysis due to the lack of sufficient number of measurement points.

Chameleon "lost" the Bay City Site and the date that the "loss" occurred; (b) Chameleon's present legal right of access to the Bay City Site in view of the sublease given to Landrum; (c) the present status of the KFCC(AM) transmission facility at the Bay City Site, and if the status has been changed, the date of any such change and all details concerning the nature and extent of that change; and (d) the present address of the KFCC(AM) main studio.

Second, in cases where the applicant's proposed STA operations do not allow for the continued placement of a principal community contour over the applicant's licensed community, we require that the applicant demonstrate that are no other sites available to better serve the community of license. As noted above, the staff has concluded that KFCC(AM) does not provide principal community coverage to Bay City in accordance with the Commission's Rules. Furthermore, we note that Chameleon has failed to state whether it has investigated the availability of other sites to better serve Bay City. Therefore, please address the following:

- 2. Furnish a showing demonstrating that no better site - other than the Harris County Site - exists from which KFCC(AM) can maintain coverage as closely as possible to the licensed service, including principal community contour coverage of Bay City, Texas.**

Third, operations authorized under STA, absent the filing of a formal application, are specifically "temporary" in nature. See 47 C.F.R. § 73.3516. For an STA necessitated by technical problems, a grant of STA may be restricted to an initial period not to exceed 90 days, with only a limited number of extensions permitted. See 47 C.F.R. § 73.1635(a)(4). Recognizing that operations pursuant to a STA are intended to be limited,⁸ and mindful of Section 319(a)'s statutory prohibition against premature construction,⁹ we are disinclined to grant such authority in cases where the applicant intends a construction of permanent facilities. For this reason, the staff denied Chameleon's initial STA request on April 21, 1995 because it did not specify operations on an existing site. Chameleon's second request, however, appears to have indicated that operations could be commenced from an "existing 180' foot tower." Because the record is unclear as to whether Chameleon constructed the above-referenced tower in the interval between the staff's oral denial of the initial request, and Chameleon's May 12, 1995 submission of the amended request, please provide the

⁸ Section 73.1635's statutory origin is found in Section 309(f) of the Communications Act of 1943, as amended (Commission may authorize operations pursuant to "temporary authority" under "extraordinary circumstances").

⁹ "The overriding Congressional concern underlying Section 319 was the prejudicial effect that a substantial expenditure of funds for construction would have on the Commission's consideration of a particular application." Patton Communications Corp., 48 RR2d 349 (1980).

following information for the Harris County Site:

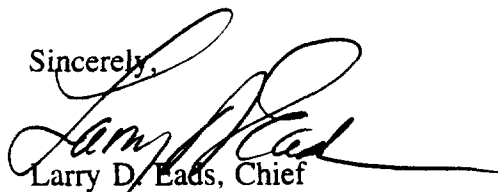
3. **Provide: (a) the name, address and telephone number of the site owner; (b) any lease or written agreement providing for Chameleon's access to the site; (c) whether Chameleon's principals, or its officers or directors, directly or indirectly, ordered construction of a tower on that site and if so, the date construction of the tower began; (d) the name, address and telephone number of the tower construction contractor; and (e) provide a copy of the FAA filing discussed in the April 21, 1995 STA request and a copy of the FAA Determination of No Hazard.**

Finally, although the Commission was notified that the consummation of the assignment of KFCC(AM) to Chameleon had occurred, the exact date that consummation occurred was not identified. Therefore, please provide the following:

4. **Provide the exact date of consummation of the assignment of KFCC(AM) from Landrum to Chameleon (BAL-950216EA).**

Please file the above-requested information within **ten (10) days** of the date hereof. As noted above, the subject STA expires on August 1, 1995. For administrative convenience, we will extend the subject STA to cover this ten-day period. Further extensions will not be contemplated absent a sufficient showing that an extension is warranted. Please file a copy of your response with the Office of Secretary to the attention of Mr. James Burtle. Also, please simultaneously file a copy of your response by facsimile to Mr. James Burtle at 202-418-1410. A courtesy copy of your response must also be served upon counsels for South Texas and Whitehead.

Sincerely,



Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: James P. Riley, Esquire
John Joseph McVeigh, Esquire
CIB Houston

NNN 96-173

Facsimile Cover Sheet**KFCC Radio 1270 AM**

10865 Rockley Road Houston, Texas 77099

To: Larry Eads
Company: Federal Communications Commission
Phone:
Fax:

From: Vickey Scott
Company: KFCC Radio
Phone: (713) 575-1270
Fax: (713) 564-8653

Date: 8/11/95
Total Pages: 70

Comments: Per your faxed letter this morning:

Mr. Werlinger is not in the office today; however, I have contacted him and he stated that the enclosed response was sent for to your office last Friday, August 4, 1995. He asked me to fax this copy to you this morning. He will be contacting you personally regarding this matter.

Thank you,

Vickey Scott



KFCC

1270 AM

Chameleon Radio Corporation

(713) 575-1270 Fax: (713) 584-8853

10865 Rockley Road Houston, TX 77099 P.O. Box 1235 Stafford, TX 77497

Houston's Unique Talk and International Language Station

August 4, 1995

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

Re: Letter of Inquiry 1800B3-KDY (KFCC - AM, Bay City, Texas)

Dear Mr. Eads:

This narrative and the attached exhibits are offered in response to your Letter of Inquiry issued to Chameleon Radio Corporation (Chameleon) # 1800B3-KDY dated July 25, 1995.

Regarding the Special Temporary Authorization (STA) granted May 9, 1995 (as amended May 12, 1995), Chameleon Radio Corporation filed a request for extension of that STA on August 4, 1995. On that same date, (August 4, 1995), Chameleon Radio Corporation filed with the an FCC Form 301 request to make the current STA site a permanent location for the KFCC day and night operation specifying 2.5 kw Day operation and 8.50 kw Night operation with different day and night constant power (a copy of that application is transmitted herewith). The Form 301 also requests a change of the city of license for KFCC to Missouri City, Texas as provided by the Commission's rules.

Your Letter of Inquiry seeks to set the record straight on actions taken by Chameleon in order to secure the currently effective STA for KFCC Radio (formerly KIOX). The documents and information requested are attached as exhibits to this response and we will address each of them in order. Beyond those documents, Chameleon also submits additional information and documents which it feels more clearly develop the record regarding actions taken by Chameleon and those of other licensees which, taken as a whole support Chameleon's actions and further support Chameleon's request for an extension of its STA and immediate approval of its request to make the major changes in KFCC which are included in its currently pending Form 301 application.

Chameleon submits and the enclosed information clearly demonstrates that it was the actions by Susquehanna Radio Corporation and more particularly Salem Communications, which led to the extraordinary efforts of Chameleon to save both its business and the broadcast outlet it had developed for international language programmers in the Houston market. Susquehanna Radio Corp is involved to the extent that it terminated a five year LMA agreement only seven months into the pact. Salem is involved to the extent that it has systematically and with malice of forethought set about destroying first the business of KENR Management Company, Inc., and then that of its sister company Chameleon Radio Corporation. The very fact that Salem was first and until only three weeks ago, the only entity to object to Chameleon's STA with KFCC will be shown to clearly demonstrate that Salem has been engaged and continues to be engaged in competitive strike activities aimed at nothing more than destroying the financial viability of Chameleon.

To that end, Chameleon submits Exhibit: 1 which is a narrative explaining Chameleon's actions and those taken by sister company KENR Management Company, Inc. (the principals of both companies are identical). This narrative explains the efforts of KENR Management to provide commercial programming opportunities for ethnic groups which prior to KENR Management's arrival in the market had simply not been available. It explains the fact that KENR Management entered into a Five Year (60 month) Time Brokerage Agreement (LMA) with Susquehanna Radio Corporation (Susquehanna) then licensee of Radio Station KENR, Houston, Texas (1070 kHz, 10 kw-D, 5 kw-N, U, DA-2) on April 1, 1994.

In order to meet the Commission's requirements, the Time Brokerage Agreement maintained a ninety (90) day cancellation clause which would allow the licensee to terminate the agreement. Though this language is standard, KENR Management received verbal assurances from Susquehanna that no efforts would be made to sell KENR during the term of the LMA, allowing KENR Management to, in turn, make commitments to programmers wishing to place programming on the station.

The narrative explains KENR Management's efforts in making airtime available to ethnic groups and organizations which had never before in Houston had the opportunity to broadcast news, community events, and religious views and opinions in their native language. The effort resulted in more than 40 programmers representing 11 nationalities from five continents establishing programming on KENR in the first six months on the air. These programmers exhibited a high demand for a commercial broadcast outlet upon which to express their views as well as a faith in KENR Management's ability to remain on the air and provide them the services necessary to sustain the programming. KENR Management, relying on its five year commitment with Susquehanna, committed its resources and total effort to providing that service to the programmers.

On November 7, 1994, only seven months after KENR Management' commencing programming on KENR, KENR Management was informed by Susquehanna that it had sold the station and that KENR Management's LMA would be canceled as of Midnight, February 3, 1995. The station had been sold to the Salem Communications group (Salem) which would be operating in Houston as South Texas Broadcasting, Inc. At the same time, Salem had purchased KKZR-FM, a Comroe, Texas licensed FM which serves the Houston metro. Salem's purchase of the two stations would be consummated on the same day, March 3, 1995.

KENR Management had received no indication whatever from Susquehanna of the licensee's efforts to sell the KENR. The announcement came as a complete shock to both KENR Management and its quickly growing number of programmers. Inasmuch as Salem operated a large chain of stations which programmed a Christian format, it came as no; however, that Salem announced in the press that it would be changing formats of both KKZR and KENR to Christian programming.

This sale and impending change in format for KENR meant two things to KENR Management. First, it meant that the tens of thousands of dollars and thousands of hours of work invested in its Houston LMA were apparently in vain. It meant that KENR Management Company, Inc. faced bankruptcy in spite of the one hundred thousand dollars it would be owed by Susquehanna as compensation for canceling the LMA. Relying on its five year commitment as part of its LMA, KENR Management Company, Inc. had signed a five year lease on studio and office facilities, making thousands of dollars of leasehold improvements. In addition to losing its leasehold improvements, it was still responsible for more than \$155,000 in lease payments during the 50 months remaining on its lease. Other contractual commitments would leave KENR Management Company with more than a quarter of a million dollars in obligations and, without benefit of the income provided by its programming, only \$100,000 in severance money to meet those commitments, a bleak circumstance indeed.

Secondly, and perhaps more importantly, the sale meant KENR Management could not meet its commitment to its programmers, who in turn, would not be able to meet their respective commitments and would no longer be able to provide the programming their communities. Like KENR Management, programmers had invested both time and money in establishing their various blocks of programming. In November, 1994, most of them had been on the air 120 days or less and only then beginning to establish both a substantial audience recognition of their presence and the financial support their eventual success would require. In short, loss of the outlet at this point would be devastating both financially and in the various communities served by the groups on the air.

The fiduciary responsibility to its programmers was not taken lightly by KENR Management and the decision was made to put forth every effort possible to find an alternative place on the AM dial for KENR Management's programmers to produce their programming. KENR Management commenced conversations with several Houston area radio stations concerning the possibility of another LMA to replace that on KENR; however, no other licensee was receptive to KENR Management's offers.

It was at this point that KENR Management began conversations with Salem regarding an extension of its KENR LMA and to look at potential move-in / M's outside the immediate Houston market. Given the fact that Salem had paid \$2.75-million for KENR, KENR Management knew that no long term LMA extension with Salem would be financially possible. Hence, KENR began discussions with Salem principal Stewart Epperson regarding a short term, one year extension of its Susquehanna LMA in order to give it time to locate and move an AM in order to have the coverage to support its programming. During the month of November, 1994 and early December, Mr. Epperson gave KENR Management President Don Werlinger repeated verbal assurances that Salem would entertain such an extension but stated that he would not commit to an agreement until a decision was made on who would manage the Houston properties purchased by Salem.

In the meantime, an accomplished propagation engineer whose work has resulted in dozens of AM and FM allocation changes and construction permits, set about a detailed allocation study in an attempt to locate an AM with a potential for covering the Houston metro. In mid December, Mr. Werlinger discovered KIOX (now KFCC) in Bay City, Texas. Operating with 1.0 kw, non-directional on 1270 kHz, KIOX placed a 0.50 mV/m contour over approximately 15% of the Houston metro from its site in Bay City. It also suffered a tremendous amount of overlap of its 0.50 mV/m contour from KWHI (1280 kHz, 1 kw-ND, D) at Brenham. Werlinger determined that, by relocating the KIOX transmitter site, increasing power, and utilizing a directional antenna system, KIOX could be improved to cover both the Bay City and Houston markets, thus accomplishing KENR Management's goal of maintaining a platform for its international language programmers.

Werlinger developed a three pronged plan. First, a new corporation would be formed which would make an offer to purchase KIOX which resulted in the formation of Chameleon Radio Corporation. At the same time, Werlinger determined to work diligently with Salem on a one year extension of KENR Management's LMA on KENR since Werlinger was aware that it would take six months or longer to first obtain the KIOX license and then to obtain the construction permit (CP) necessary to make the changes in KIOX. Finally, once KIOX was purchased, KENR Management would remain programming KENR while the KIOX CP was obtained and the new facility constructed.

Without being specific as to which station was to be purchased, Werlinger related his plan to Mr. Epperson of Salem who agreed the plan had merit and again stated Salem's desire to work with KENR Management on an extension of its KENR LMA. In late December, 1994, Mr. Epperson introduced Jamie Clark as the individual who would be operating Salem's AM/FM operation in Houston.

Werlinger and Clark met twice at KENR Management's offices in December, 1994. During the first meeting which occurred on or about December 21st, Werlinger explained his company's business to Clark and explained his plans to take his programming concept to a station he would purchase. At that meeting, Mr. Clark stated he was impressed with "what you've built here," and expressed his interest in Salem's purchase of KENR Management's programming contracts. Clark said he was returning to Salem's California headquarters but would be back in Houston in a week to further discuss the entire situation.

On Clark's second visit which occurred on or about December 28, 1994, he asked to examine KENR Management's contracts and was allowed to do so. Although reluctant to allow the inspection, Werlinger knew that as the licensee, Salem would have the right to examine the paperwork, so it was allowed. It was after his inspection of the contracts that Clark first stated that he was certain Salem would have no interest in purchasing all the programming from KENR Management since a number of programmers represented non-Christian faiths (Hindu, Muslim, etc.) which would not fit with Salem's plans for Christian programming for at least part of the day on KENR.

Clark suggested that, instead of entering into an LMA extension, that Salem would rather hire Werlinger as an independent contractor who would place programming (supposedly programming from KENR Management) on KENR. It became clear during the conversation that Clark had an interest in acquiring most of KENR Management's English language and secular international language programming but was not interested in any programming which was religious and non-Christian in nature. While such religious programming represented only 25% of KENR Management's total airtime commitments, numerically, the majority of programmers would be effected and would be left with no place to produce their programming.

Werlinger told Clark he had no interest whatever in becoming an agent for Salem. He restated his interest in entering into a one year extension of the LMA he had with Susquehanna so as to have the time necessary to acquire another station upon which to place his programming. However, the offer to acquire Mr. Werlinger's services as an agent of Salem would resurface four more times prior to May 8, 1995. Each time Mr. Werlinger would politely refuse the offer. In light of the record since that time, it is now clear that Mr. Clark returned to California at the end of December, 1994 and developed a business plan for KENR which included a large portion of KENR Management's programmers.

In the four weeks which followed, KENR Management learned that Salem planned to consummate its purchase of both KENR and KKZR on March 3, 1995 in Washington, DC. Through a series of conversations with Susquehanna vice president Charles Morgan and Salem principal Stewart Epperson, it was decided that Susquehanna's LMA with KENR Management would be extended from February 3, 1995 to March 3, 1995 under the same terms as before the termination notification in November, 1994. On March 3, 1995, a one year LMA was to be executed with Salem which was identical to the Susquehanna LMA with two exceptions. The first was that the LMA could be terminated upon a 30 day notice. The second was that the monthly LMA would increase to \$20,000.00 from the \$15,000.00 in the Susquehanna LMA. Though 25% more expensive than the Susquehanna LMA, the one year LMA with Salem would allow KENR Management the time necessary to provide itself with another outlet upon which to place its programmers and continue the service it had begun nearly a year earlier.

In early February, the principals of KENR Management Company, Inc. operating under the name Chameleon Radio Corporation, agreed with Landrum Enterprises, Inc., the licensee of radio station KIOX, Bay City, Texas to purchase that facility. The plan was to first purchase the station and then present the Commission with an application to change the station's city of license to Missouri City, Texas utilizing a new transmitter site, a directional day/night antenna system to remove much of the previously licensed overlap with KWHI, Brenham, Texas, and dramatically increase the population covered by the 0.5 mV/m contour of the station. During the application and construction process, KENR Management/Chameleon would rely on its one year LMA with Salem to maintain its outlet for its international language programmers. The application seeking transfer of the KIOX license was tendered February 17, 1995.

KIOX (KFCC) was an excellent facility for KENR Management's plans. It was one of three (each separately owned) broadcast facilities licensed to Bay City. Its removal to another city of license closer to Houston would leave Bay City with two broadcast outlets, both Class C FM's, and KIOX could become the first service for a community with a much larger population (Missouri City) closer to Houston. In the process, it could dramatically reduce the previously licensed overlap to KWHI in Brenham, Texas.

KIOX had either been simulcasting with its sister FM station or carrying the audio portion of CNN Headline News for a number of years. It had long since ceased to be a local presence in its community of license and had it not been for ability of its sister FM to cover its operating expenses, KIOX might well have already gone the way of more than two dozen other once thriving Texas AM stations and ceased to exist.

As planned, the Susquehanna/Salem transfer of the KENR license took March 3, 1995 with KENR Management continuing its programming on the station. On March 6, 1995, KENR Management concluded a one year LMA with Salem and though sister company Chameleon Radio, was awaiting the transfer of the license on KIOX. During

this time, Chameleon was actively engaged in searching for a suitable transmitter site southwest of Houston in order to have a form 301 request ready to present to the Commission as soon as the purchase of the facility could be consummated.

On April 5, 1995, Don Werlinger met at the Houston offices of Salem with Jamie Clark. It was on that date Werlinger told Clark that his company in fact, applied to purchase a station which he planned to relocate and move his programmers. Mr. Werlinger told Mr. Clark that he hoped to have the application filed by May 1st and to have a construction permit for the change by August and have construction completed and be on the air in the early fall.

Clark expressed surprise at Werlinger's information. He said he had not heard of the purchase by Chameleon but stated that Werlinger's timetable "will probably fit what we doing here with getting the FM up and running." Since KKHT (formerly KKZR) was of course on the air, Werlinger took Clark's statement regarding 'up and running' to mean the format on the FM station.

The next day, April 6, 1995, Clark wrote the two sentence letter included as Exhibit: 2 and mailed it via first class mail. As the exhibit shows, only one month into a one year agreement, with no violation of that agreement on the part of KENR Management, Salem, in violation of Section 28 of that agreement (included herewith as Exhibit: 3). Section 28 of the agreement is the "Notice" section which states: "any notice required hereunder shall be in writing and any payment, notice, or other communication shall be deemed given when delivered personally, or mailed by certified mail or Federal Express, postage prepaid...". Inasmuch as the "notice" sent from Clark's office to KENR Management was delivered on Monday, April 9th, via ordinary first class mail and not personally, certified mail, or Federal Express, KENR Management elected to ignore the effective date of 12:00 am, Sunday, May 7, 1995.

Two days later, April 11, 1995, Werlinger was contacted by a programmer who indicated he had been approached by Jamie Clark regarding programming on KENR after May 7th. Such contact was clearly in violation of Section 13 of the LMA; however, inasmuch as Salem paid not attention to the Notice provisions of the contract, a simple prohibition against tampering with KENR Management's clients would mean little.

The situation became clear; prior to Werlinger's conversation with Clark on April 5th, Salem had been under the impression that KENR Management would be unable to find another facility to which he could take his programmers and, at a time convenient to Salem, it could simply give KENR Management notice of termination and take the programmers it wished to keep, those which would pose no problems with its more numerous Christian programmers, and disregard the rest. When Werlinger disclosed on April 5th that a facility had been purchased and laid out a reasonable time table for accomplishing his stated goal of moving his programmers to that new facility, it became apparent to Salem that KENR Management did indeed have a viable alternative. If the opportunity to cherry pick KENR Management's list of clients were to be realized, it had

to occur quickly, hence the letter of termination dated April 6th, signed not by an officer of the corporation, but a hireling, and issued so quickly that no attention was paid to proper delivery to conform to the terms of the contract.

It was at this point that KENR Management made two key decisions. First, it elected for the time being to ignore Salem's "letter of termination." Secondly, the company moved ahead with all haste toward finding an acceptable transmitter site in southwest Houston to which it could move. A site was found in rural Harris County between the cities of Houston, Missouri City, and Stafford which would accommodate the daytime antenna array, but which at least initially, looked as though it would not work for the night array.

In order to accommodate the night pattern, KENR Management commenced negotiations with the U.S. Army Corps of Engineers to make use on a lease basis, of a portion of the Addicks Reservoir just west of Beltway 8 and north of Interstate 10. Though Corps personnel were very accommodating and made a diligent effort to find an area inside the reservoir, no suitable location could be found and it was decided to place the night array with the day array at the Riceville School Road site (See: Form 301 with exhibits).

KENR Management/Chameleon realized it was dealing with a predatory entity in Salem Communications and that it now had only a matter of weeks (not months as previously planned) before it had to be in place with another facility. The only possible chance for remaining a viable company lay in somehow receiving permission to make a change in the KIOX transmitter site through temporary authority and then presenting a completed FCC form 301 at a later date.

The decision was made to seek Special Temporary Authorization (STA) to relocate the KIOX (KFCC) transmitter site to the southwest Houston location while the Form 301. Immediately following closing on April 20, 1995, Chameleon sought an STA for the Houston site with a request for 1,000 watts daytime and 250 watts at night. The proposal sought to construct a new tower at the site which would become a part of what was then believed would be a three tower array. Eventually, in order to accommodate the night array, a fourth tower was utilized in the proposal.

John Vu, a member of the FCC's AM Branch staff, indicated he could grant an STA for the site, but would not allow the construction of a new tower for that purpose. Mr. Werlinger, who had either been a principal or a consultant in a number of STA requests through the years, reminded Mr. Vu of the fact that his predecessor, May Bradfield, had routinely granted construction of new towers in such cases. In fact, it is a virtual impossibility to use anything other than a newly constructed tower in an AM STA's inasmuch as the guywires on any AM tower must be insulated with in-line insulators in order to accommodate the AM antenna.

Though Mr. Werlinger repeatedly argued his case with Mr. Vu regarding the tower construction. He pointed to several STA's in which he was aware that Bradfield had routinely granted minimum tower construction. He indicated that he had sought at least verbal clearance with the Federal Aviation Administration's Southwest Regional Office in Ft. Worth and had been assured by Bruce Beard of the FAA that the proposed 180' tower would not violate FAA minimums and as far as the FAA was concerned, there wasn't even the need for filing an FAA form 7460-1. Mr. Werlinger did; however, file the form to be conservative. Mr. Vu remained adamant that no new construction could take place.

During the course of a conversation on Tuesday, April 26, 1995, with Joe McClish of Economy RF Construction Company, an Austin, Texas communications tower erection company, Mr. McClish asked Mr. Werlinger if he (McClish) would be prohibited from erecting a tower 180 feet in height and leasing the tower to Chameleon once and if the STA were permitted. Mr. Werlinger relayed the FAA's opinion that a tower of that height would need no FAA filing. He also made it clear to Mr. McClish that he (Werlinger) had no authority from the FCC to commission construction of a tower and could not commit KIOX (KFCC) to using any such tower until and unless the STA was granted.

Mr. McClish stated he was aware of the fact that he was at risk of constructing a tower for which he would have no immediate tenant unless the STA request by Chameleon was approved. Nevertheless, he stated that if Chameleon would grant use of its land (which Chameleon held under a lease/purchase agreement) on a reasonably priced basis, his company would like to erect a tower and rent space to other tenants if Chameleon could not make use of the tower. Werlinger agreed and McClish stated he would have a tower erected prior to May 1, 1995.

On Saturday, April 29th, Mr. McClish drove from Austin and did the preparation work for the tower including pouring concrete foundations. By Monday, May 1, 1995 the Rohn model 25 tower was in place; however, nothing relating to a broadcast tower was on the site with the exception in line insulators in the guywires. All work was done at McClish's expense. No funds were passed from Chameleon or any principal in Chameleon toward the construction of the tower. In fact, nothing relating to broadcast equipment was placed on the site until after the grant of the STA. The folded unipole and ground system were installed on the tower owned by McClish following grant of the STA.

Although Mr. McClish had reasonable assurance from Chameleon that they would have a use for the tower in the not distant future, until the STA was actually granted, Mr. McClish had constructed a tower at his own risk with no funding from Chameleon and no formal agreement that any use of the tower would be made by KIOX (KFCC) prior to grant of the STA.

The tower was on land held under a lease purchase agreement by Chameleon; therefore, when Mr. Werlinger reported to Mr. Vu on Monday, May 1, 1995 that a tower was on the land and available for use by Chameleon, he in fact, was reporting the truth.

It was Friday, April 28, 1995 that Mr. Werlinger first heard from Jamie Clark regarding the April 6th "termination notice." Other than the first class mailed letter, nothing had been heard from Salem since Mr. Werlinger met with Mr. Clark on April 5th. In his telephone call on April 28th, Mr. Clark stated that he was calling to "start getting things wrapped up before we take over next week."

Werlinger stated he didn't know what Clark was talking about whereupon Clark referred to the letter. Mr. Werlinger stated that, even if KENR Management had received a letter from Salem, such a letter was delivered not by the terms of the contract, but rather by first class mail and as a result, KENR Management did not regard the letter as proper notice. Mr. Werlinger stated that Salem would be receiving KENR Management's notice of termination on Monday, May 1st and that KENR Management would consider the May 31st date the final day of the LMA. After some protestations, Mr. Clark told Mr. Werlinger that KENR Management would be hearing from Salem's legal counsel and hung up. No communication was forthcoming from Salem for the next six days.

That same day, April 28, 1995, KENR Management indeed issued a termination notice to Salem Communications, delivered properly on May 1, 1995, terminating the contract as of May 31, 1995. The reasoning behind the termination notice from KENR Management was Mr. Werlinger knew that, while Salem might argue that their letter had been a notice to terminate, it clearly violated terms of the LMA. Werlinger's presentation and proper delivery of a May 31st termination letter would clearly establish a date later than May 6th as the final date of the LMA.

At that point, Mr. Werlinger had an assurance from John Vu at the FCC that he (Vu) would issue an STA, but the question of a tower was still unanswered.

On Thursday, May 3rd, KENR/KFCC employee Vickey Scott was informed by a programmer that the programmer intended not to pay its May programming commitment because, "you (KENR Management) will not be on the air after Saturday night." When Ms. Scott asked the source of the programmer's information, she was told that the programmer had received the information from Jamie Clark.

When informed of this information, Mr. Werlinger telephoned Jamie Clark to warn Mr. Clark that contact by Salem to solicit business from KENR Management programmers was prohibited by Section 13 of the LMA. Mr. Werlinger demanded that Mr. Clark cease such contact whereupon Mr. Clark denied initiating any contact with any KENR Management client and categorically any attempt to maneuver any clients away from KENR Management, a denial which would later be proved to be untrue.